BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of new environmental program for cost recovery through Environmental Cost Recovery Clause by Tampa Electric Company.	DOCKET NO. 050958-EI ORDER NO. PSC-07-0783-FOF-EI ISSUED: September 26, 2007

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
MATTHEW M. CARTER II
KATRINA J. McMURRIAN

ORDER DENYING MOTION FOR RECONSIDERATION

BY THE COMMISSION:

BACKGROUND

On December 27, 2005, Tampa Electric Company (TECO) petitioned for cost recovery through the Environmental Cost Recovery Clause (ECRC) of the costs associated with a program entitled "Big Bend Flue Gas Desulphurization System Reliability Program" (FGD Reliability Program) for improved reliability of the flue gas desulphurization systems (scrubbers) on Big Bend Units 1, 2, and 3. TECO asserted that the program was designed to comply with its Consent Decree with the United States Environmental Protection Agency (EPA) issued February 29, 2000, which memorializes the settlement of the EPA's complaint regarding TECO's Big Bend Units' compliance with the Clean Air Act. Pursuant to the terms of the Consent Decree, on August 19, 2004, TECO submitted a letter to the EPA indicating that the Big Bend Station would continue to burn coal. This declaration triggered paragraph 40 of the Consent Decree. Under the requirements set forth in sections B and C of Paragraph 40, TECO cannot operate its base load coal plants at Big Bend without scrubbers after 2010 (for Big Bend Unit 3) and 2013 (for Big Bend Units 1 and 2).

We approved the FGD Reliability Program as eligible for recovery through the ECRC by Order No. PSC-06-0602-PAA-EI, issued July 10, 2006. We found that the proposed program met the eligibility criteria for ECRC recovery prescribed by section 366.8255, Florida Statutes. We said:

> We find that the costs associated with TECO's proposed program to improve the reliability of the scrubbers at Big Bend are eligible for recovery through the ECRC as environmental compliance costs, 'incurred in compliance with the Clean Air Act, and any amendments thereto or any change in the application or enforcement thereof.'

Order No. PSC-06-0602-PAA-EI at 2.

On July 21, 2006, the Office of Public Counsel (OPC) filed a Petition on Proposed Agency Action objecting to our PAA order and requesting a formal administrative hearing on the matter. Accordingly, we held a hearing on March 5, 2007, at which OPC contested the ECRC eligibility of four individual projects in TECO's proposed FGD Reliability Program. Those projects were: the Big Bend Units 1-4 Electric Isolation Project; the Big Bend Units 3-4 Split Inlet Duct and Split Outlet Duct Projects; and the Gypsum Fines Filter Project. The parties stipulated that the costs of the remaining FGD reliability projects should be recovered through the ECRC or through base rates as TECO had proposed. Following the hearing, each party filed a post-hearing brief and statement of issues and positions.

We issued our decision on the matter by Order No. PSC-07-0499-FOF-EI (Final Order), issued June 11, 2007. We approved the eligibility of the FGD Reliability Program costs for recovery through the ECRC. We said:

> [W]e confirm our prior PAA order and approve all of the prudently incurred costs associated with TECO's proposed FGD Reliability Program as eligible for cost recovery through the ECRC, with the exception of those costs TECO has proposed be recovered through base rates. We find that approval of these projects as eligible for cost recovery through the ECRC is consistent with the ECRC statute and in the public interest.

Final Order at 3.

OPC then filed a Motion for Reconsideration of the Commission's Order and a Request for Oral Argument on June 25, 2007. TECO responded in opposition to OPC's motion on June, 29, 2007, and objected to OPC's request for oral argument as well.[1] Upon consideration we hereby deny the motion for reconsideration. Our findings and conclusions supporting that decision are set out in detail below. We have jurisdiction pursuant to section 366.8255, Florida Statutes.

DECISION

Standard of review

OPC states that the standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its order. OPC goes on to state that motions for reconsideration are not appropriate for reargument of matters that have already been considered, but cites the case of State ex. Rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958), for the proposition that there will be times when a court will inadvertently overlook a fact, controlling decision or a principle of law material to the case. Following on that proposition, OPC states:

[1] We denied OPC's request for oral argument at our September 11, 2007, Agenda Conference.

> Thus, arguments regarding mistakes of law and fact which require discussion of the same facts and issues that were addressed in post hearing briefs and recommendations are not merely rearguing matters that had already been considered. This motion for reconsideration addresses the facts and issues as they relate to the mistakes of law and fact and those facts which were overlooked in the Order.

Motion at 3.

TECO objects to OPC's motion for reconsideration on the basic ground that the motion spends 16 pages rearguing OPC's positions in the case and disagreeing with the conclusions we reached in our Final Order, but it does not raise one fact or legal precedent that we did not fully consider in the case. TECO cites United Gas Pipeline Co. v. Bevis, 336 So. 2d 560, 565, (Fla. 1976), in support of its position, where Justice England chastises the parties for extensive reargument of the case on rehearing:

> I would deny rehearing in this case in the face of the multi-page, argumentative rehearing petitions which have been filed, for the reasons set forth in Texas Co. v. Davidson, 76 Fla. 475, 478, 80 So. 558,559 (1918). See also Florida Appellate Rule 3.14(b), which states that a petition for rehearing shall be 'without argument'.
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> Counsel for Monsanto (7 page petition), Air Products (14 page petition), and the Public Service Commission (4 page petition) have essentially reargued the entire case, prompting counsel for United Gas Pipe Line and Florida Gas Transmission to file brief-like replies of 15 and 18 pages, respectively. This expenditure of counsel's time, and the clients' money, is completely unjustified. This case had been argued, briefed and fully considered by the Court when the decision was initially rendered. It is not the office of rehearing to invite a complete re-analysis of all that has gone before. See State ex rel. Jaytex Realty Co. v. Green, 105 So.2d 817, 818-19 (lst DCA Fla. 1958).

TECO asserts that OPC's motion is similar to the motions filed in United Gas Pipeline and should be denied on that basis.

Findings and Conclusion

The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3d DCA 1959), citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817(Fla. 1st DCA 1958).

We carefully reviewed the First District Court of Appeal's opinion in Green, 105 So. 2d at 818-819, since OPC relied upon it as justification to restate many of the arguments it made at

hearing and in its post hearing brief, and since TECO cited it and United Gas Pipeline for the opposite reason. Here, in pertinent part and in context, is what the Court said:

> The sole and only purpose of a petition for rehearing is to call to the attention of the court some fact, precedent or rule of law which the court has overlooked in rendering its decision. Judges are human and subject to the frailties of humans. It follows that there will be occasions when a fact, a controlling decision or a principle of law even though discussed in the brief or pointed out in oral argument will be inadvertently overlooked in rendering the judgment of the court. There may also be occasions when a pertinent decision of the Supreme Court or of another District Court of Appeal may be rendered after the preparation of briefs, and even after oral argument, and not considered by the court. It is to meet these situations that the rules provide for petitions for rehearing as an orderly means of directing the court's attention to its inadvertence.
>
> It is not a compliment to the intelligence, the competency or the industry of the court for it to be told in each case which it decides that it has 'overlooked and failed to consider' from three to twenty matters which, had they been given proper weight, would have necessitated a different decision.
>
> Certainly it is not the function of a petition for rehearing to furnish a medium through which counsel may advise the court that they disagree with its conclusion, to reargue matters already discussed in briefs and oral argument and necessarily considered by the court, or to request the court to change its mind as to a matter which has already received the careful attention of the judges, or to further delay the termination of litigation.

Id. at 818-819.

We find that OPC's motion simply reargues matters we fully considered in our Final Order in this case. We believe that OPC has used the reconsideration process as a medium to advise us that it disagrees with our conclusion and to reargue matters already discussed at the hearing and in post hearing briefs. OPC has attempted to justify its reargument by explaining that it has to reargue the case to point out the mistakes of law and fact and the matters we overlooked, but OPC has not identified any facts or law that we overlooked. As shown in more detail below, OPC has only argued that we "misinterpreted," "misconstrued," or "misapplied" the law and facts. If we misconstrued, misinterpreted, or misapplied the law and facts of the case, however, we would have to have considered them in the first place. We find that OPC has not identified any point of fact or law which was overlooked or which we failed to consider in rendering our Final Order in the first instance. OPC has only registered its disagreement with our decision.

The Motion for Reconsideration

In its motion for reconsideration, OPC states that section 366.8255, Florida Statutes, permits electric utilities to recover through the ECRC all prudently incurred costs "that are

necessary and required" to comply with environmental laws or regulations, and all other costs should be recovered in base rates. OPC argues that we should strictly apply section 366.8255 to only those costs necessary to comply with actual environmental laws or regulations. OPC argues that four of the projects associated with TECO's FGD Reliability Program are not being done to comply with an actual environmental law or requirement imposed by an agency with the authority to impose such requirements. Therefore, OPC argues, since we approved those projects as eligible for cost recovery through the ECRC, we misapplied the statutory standard for ECRC recovery, and "[m]isapplication of this standard in the Order has resulted in mistakes of law or fact and the overlooking of certain facts." Motion at 2.

OPC claims we made four specific mistakes of fact or law in our Final Order: 1) creating a new "improved scrubber reliability" environmental requirement for cost recovery through the ECRC; 2) misconstruing representations made by TECO to the EPA; 3) misinterpreting the parties' partial stipulation for ECRC recovery of certain projects included in the FGD Reliability Program; and 4) improperly ignoring the function of the electric isolation project.

New environmental requirement

Regarding OPC's assertion that our Final Order created a "new environmental requirement," OPC argues that because paragraph 40 of TECO's consent decree does not mention scrubber reliability as a specific requirement, our Final Order mistakenly created a new environmental requirement when it stated at page 8: "Therefore, to maintain the same unit availability, scrubber reliability must be improved after the by pass allowance is eliminated." According to OPC, neither Paragraph 31 nor Paragraph 40 mention scrubber reliability as a requirement of the Consent Decree, and therefore we mistakenly expanded the scope of cost recovery under section 366.08255, Florida Statutes. OPC also argues that we misapplied Order No. PSC-02-1421-PAA-EI[2] (Turtle Order) to this case, because in the Turtle Order FPL incurred costs to comply with an environmental requirement to install a turtle net, but in this case, OPC claims, there is no environmental requirement being implemented.

TECO responds that the Final Order does not create any "improved scrubber reliability" environmental requirement, as OPC argues. TECO considers this part of OPC's motion to be "purely an exercise in semantics" and a reargument of OPC's position throughout the case that the four contested projects are not needed to comply with TECO's Consent Decree. According to TECO, in our Final Order we recognized that tighter restrictions in Paragraph 40 of the Consent Decree required that TECO could not operate its base-load coal units 1 through 3 at Big Bend unscrubbed after 2010 and 2013. The four contested projects were part of an integrated program to improve scrubber reliability to comply with the deadlines imposed by Paragraph 40 of the Consent Decree. TECO states that:

> Shutting down the units when the scrubbers are not operational, in face of Tampa Electric's statutory obligation to serve, simply is not an option. Carried to its logical extreme, OPC's contrary position would defeat each and every ECRC cost

[2] Issued October 17, 2002, in Docket No. 020648-EI, In re: Petition for approval of environmental cost recovery of St. Lucie Turtle Net Project for period of 4/15/02 through 12/31/02 by Florida Power & Light Company.

> recovery proposal. Rather than complying with any new environmental restriction, OPC would have the utilities simply shut down any affected generating unit or units at any time the new restriction might otherwise be violated, regardless of the impact that shutdown would have on utility customers.

Response at 5. TECO argues that OPC's attempt to recast TECO's compliance option for adherence to its Consent Decree as some newly created environmental requirement is without merit.

TECO also argues that OPC is simply rearguing its position that TECO did not include the four contested projects in its Phase I and Phase II plans for optimizing the Big Bend FGD System, and therefore did not consider them necessary to comply with the Consent Decree requirements. TECO points out that we fully considered OPC's position and did not overlook anything by recognizing the differences between TECO's short-term Phase I and Phase II compliance projects and longer term capital projects designed to comply with the stricter terms of Paragraph 40 of the Consent Decree.

TECO disagrees with OPC's discussion of the applicability of our Turtle Order to its FGD Reliability Program. TECO states that OPC's assertion that in this case there is no environmental requirement to be implemented is clearly incorrect. The environmental requirement to be implemented is Paragraph 40's deadlines for operating the Big Bend units unscrubbed. TECO argues that we recognized this in our Order and drew the appropriate comparison to our prior order finding that where a particular environmental requirement does not detail the specific means to comply with the requirement, the utility was impliedly required to comply in the most reasonable and cost-effective manner. TECO believes that OPC's demand that compliance measures be specifically named in the Consent Decree is not consistent with our precedent. In this regard, TECO states:

> Compliance with environmental mandates is not a game of Simon says. Instead, it involves the task of selecting appropriate measures to effect compliance even though the specific measures selected may not be dictated in the order mandating compliance. OPC's reargument of this point should, once again, be rejected.

Response at 7.

Findings and Conclusion

We believe that OPC's assertions that we created some new "scrubber reliability" environmental requirement is simply a recasting of its arguments that certain projects that are part of TECO's FGD Reliability Program are not required or necessary to comply with TECO's Consent Decree, and Paragraph 40 of the Consent Decree is not a new environmental requirement. We addressed these assertions thoroughly on pps. 7-10 of our Final Order, under the headings, "New Environmental Requirement" and "Necessity of the Projects." OPC's attempt to recast the old arguments with a new name is not sufficient reason to grant reconsideration.

Misconstrued representations to the EPA

OPC claims that our Final Order misconstrues representations made by TECO to the EPA and "makes a fundamental error in the legal import of the Quarterly reports to the EPA" by "essentially ignoring" the fact that TECO reported the four projects in dispute in this case as not required by the Consent Decree and then claimed in this case that they were required by Paragraph 40. OPC disputes the Order's assertion that ". . . the wording of the reports does not change the nature of the projects, which would not have been undertaken but for the requirements of Paragraph 40." Final Order at 9. OPC contends that this statement mistakes the importance of "the wording of the reports" and contains "an underlying mistaken statement of the law that the company's undertaking of an action, without a legal compulsion, is sufficient to justify recovery through the ECRC." Motion at 9.

TECO argues that our Final Order does not misconstrue representations TECO made to the EPA. According to TECO, OPC is simply rearguing the positions it took at the hearing and in its post hearing brief. Inclusion of the four contested FGD System Reliability projects in TECO's quarterly compliance reports does not render them "not required" by the Consent Decree. TECO asserts that OPC's argument was addressed and rejected in our Final Order at page 9, and OPC simply disagrees with our conclusion.

Findings and Conclusion

We clearly addressed TECO's quarterly reports to the EPA in our Final Order at page 9, where we said:

> We do not believe that we can find these projects to be discretionary based on the information TECO did or did not include in its Quarterly Reports to the EPA. The evidence shows that some of the information TECO submitted related to implementation of another section of the Consent Decree, Paragraph 31, and some of the information was submitted to take full advantage of the safe harbor provision of the Consent Decree to protect itself from further litigation with the EPA. We agree with witness Crouch that the wording of the reports does not change the nature of the projects, which would not have been undertaken but for the requirements of Paragraph 40.

OPC may disagree with our conclusion, but that is not reason to grant reconsideration.

Misinterpretation of partial stipulation

OPC claims that our Final Order misinterpreted the partial stipulation that several projects associated with TECO's FGD Reliability Program were eligible for cost recovery through the ECRC. OPC disputes the statement in the Final Order inferring that the stipulation assumes that the Consent Decree is a new legal requirement and contending that OPC was taking inconsistent positions regarding the projects that were not in dispute and the projects that were in dispute. OPC asserts that the stipulation contains no assertion one way or another about whether the projects are "new" or not. OPC claims that the use of the word "new" in the title of the

scrubber reliability program was taken out of context. According to OPC: "a plain reading of the stipulation shows that the word "new" was employed as a means of referring to those projects that were to be included in the stipulation, and nothing more. If the Commission allows its Orders to read into stipulations things that are not there, this will have a chilling effect on parties entering into stipulations." Motion at 11.

TECO disagrees with OPC's contention that we misinterpreted the Partial Stipulation. According to TECO, we simply observed at page 8 of the Final Order that the Consent Decree, including Paragraph 40, is a new environmental requirement because the costs of its implementation occurred after 1993 and it was enacted, became effective, or its effect was triggered after the company's last test year upon which rates are based. According to TECO, that is the material finding we made with respect to the stipulation.

Findings and Conclusion

Our comment about the partial stipulation on recoverability through the ECRC of 9 projects out of the 13 that make up TECO's FGD Reliability Program was made in the course of our discussion of whether Paragraph 40 of the Consent Decree represented a new environmental requirement, which OPC had argued it did not. We said:

> Both section 366.8255, Florida Statutes, and the Gulf Order indicate that an environmental requirement is a "new" environmental requirement if the costs associated with its implementation occurred after 1993 and it was enacted, effective, or whose effect was triggered after the company's last test year upon which rates are based. No other time limitations are ascertainable from the statute or the Commission's decisions. The evidence is uncontested that TECO's Consent Decree with the EPA was executed in 2000 and no costs to implement the settlement were incurred before April 13, 1993. It is also clear that TECO's last rate case was filed before the litigation which led to the Consent Decree. This is also evident by the fact that the Commission has already approved other programs triggered by the Consent Decree. Clearly, the Consent Decree has been established as an eligible environmental compliance requirement for TECO pursuant to the statute and Commission policy.
>
> Further, while OPC contests four of the 13 proposed projects as not eligible for recovery through the ECRC because Paragraph 40 of the Consent Decree is not a "new" requirement, it has stipulated to the recovery of the costs of the remaining projects, most through the ECRC. Inherent in that stipulation is the assumption that the Consent Decree is a new legal requirement. OPC cannot logically argue that that requirement is not "new" as to some of the reliability projects, but is "new" for others. OPC's argument fails to take into consideration the language of the Gulf Order criteria, which states that projects are eligible for ECRC recovery if they are legally required to comply with a governmentally imposed environmental regulation enacted, became effective, or whose effect was triggered after the company's last test year upon which rates are based. That is

> true for the entire Consent Decree, and especially for Paragraph 40. (emphasis supplied)

Final Order at 8.

While OPC may disagree with the position we took on the matter, this is not a valid reason to grant reconsideration.

Function of the electric isolation project

Regarding OPC's assertion that our Final Order improperly ignored the function of the electric isolation project, OPC contends that while the Final Order recognized that 18 percent of the new transformer would not be used for pollution control equipment it still allowed recovery of the full costs of the transformer through the ECRC. OPC states that the Final Order failed to consider our independent obligation to set fair, just and reasonable rates by allowing that amount to be recovered through the ECRC. OPC states that the fundamental flaw in the Final Order's analysis of cost recovery for the transformer is that the Final Order misconstrued the reason for the new transformer addition. According to OPC, the evidence showed that the new transformer was not necessary to meet an environmental requirement, but rather was driven by the need for two new ID fans which were not environmental equipment. OPC claims that the Final Order ignored TECO's own Sargent & Lundy Study on fan capacity. OPC states that we committed a fundamental error by allowing recovery of the cost of the new transformer through the ECRC before determining whether the addition of the two new ID fans is appropriate.

OPC concludes its motion with the assertion that we should strictly apply the standard prescribed in section 366.8255, Florida Statutes, and disallow ECRC recovery of the costs associated with the 4 disputed projects, because they are not necessary to comply with an actual law or regulation.

TECO asserts that OPC's position on the electric isolation project is without merit, and the issues regarding this component of the overall program were fully vetted. The deficiencies in OPC witness Stamberg's testimony on this subject were described in detail in the rebuttal testimony of TECO witness Smolenski, at Tr. 221 - 230. TECO states that OPC's four page reargument of this same point should be rejected, consistent with our earlier disposition of this argument in our Final Order. According to TECO, on pages 13 and 14 of its motion OPC misstates the findings and conclusions of the Sargent & Lundy study, using carefully edited quotes and misstatements, as OPC did in its post-hearing brief. TECO argues that the study's recommendation clearly states that the use of Induced Draft (ID) fans is part of the lowest cost alternative despite OPC's attempts to characterize it as just the opposite. The study made recommendations from among the alternative forced draft ("FD") fans from a group of FD fan alternatives. The study also evaluated and made recommendations from alternative types of ID fan alternatives. At no time does the Sargent & Lundy study recommend that FD fans be used in lieu of ID fans. Sargent & Lundy clearly states on page 5, section 1.2 of its study, "[T]his report has been written based on balanced draft operation." In the power plant engineering world, TECO contends, it is universally understood that balanced draft operation is both practically and theoretically impossible without the use of ID fans.

In its conclusion TECO states that OPC has not identified any point of fact or law that was overlooked or which we failed to consider in its Final Order, and therefore the motion has not met the standard for reconsideration and it should be denied.

Findings and Conclusion

We fully addressed OPC's arguments regarding TECO's electric isolation project and the function of the ID fans, as well as our reasons for allowing recovery through the ECRC of 18 percent of the transformer's load that will not support environmental processes. We said:

> The new Induced Draft (ID) fans 3A and 3B, and the new transformer 3B that will serve the new ID fan load, are considered by OPC to be discretionary. TECO responds that the new transformer 3B is needed as a consequence of the added 12,281 KVA of electrical load due to the new SCR system and the added 12,939 KVA of electrical load due to reconfiguration of the scrubber electrical system. The existing transformer 3A alone will not be able to handle the load. Due to the conversion to balanced draft operation after installing the ID fans, 3,750 KVA of the existing boiler load will be transferred to the ID fans. This 3,750 KVA load, representing 18 percent of transformer 3B's total connected load, will not be dedicated to pollution control. The new transformer 3B will not replace the existing transformer 3A. This is different from the booster fan project where fully depreciated base rate items are replaced with new equipment that is accordingly not included in the ECRC. We find that the new transformer 3B is not a base rate item.

Final Order at 11.

Contrary to OPC's claim, the Final Order stresses the critical function of electric isolation, which is the reason for the need for the new transformer 3B. We found that the electric isolation function was a critical and integral part of the reliability program and necessary as a compliance option for the requirement imposed by Paragraph 40 of TECO's Consent Decree. We said:

> OPC's position that the electric isolation project and the split inlet duct and outlet duct projects are discretionary is not supported by the record. The current configuration of the Big Bend Station, including the sharing of the common electric power supply, the duct system, and the absorber towers, was designed based on the assumption that TECO would be able to operate generating units 1, 2, and 3 without scrubbing the flue gas. After this bypass allowance expires due to the additional restriction imposed by Paragraph 40 of the Consent Decree, scrubber reliability must be improved. Changing the current configuration is an essential component of the scrubber reliability program, so that the operational issues of a single generating unit remain isolated and will not affect other units. The electric isolation project provides this isolation for the electric power supply system, while the duct reconfiguration provides isolation

> for the corresponding duct system, which will also isolate the absorber towers for each of the two units.

Final Order at 9.

With respect to the ID fans, the Sargent & Lundy Study was part of the evidentiary record and we did not overlook it. It was a separate report dated April 5, 2005, and is not related to the study of scrubber reliability by Sargent & Lundy to support the Electric Isolation Project. The fan study supports the Final Order's finding that the ID fans are related to a separate Selective Catalytic Reduction (SCR)[3] program which was approved in 2005. The title of the study states it is for the SCR project. TECO did not request, nor did the Final Order approve, the ID fans as part of the Electric Isolation Project.

While OPC does not agree with our decision regarding TECO's electric isolation project, we did not overlook or fail to consider any material fact or applicable law, and therefore the matter does not warrant reconsideration.

CONCLUSION

For the reasons explained above, OPC's motion for reconsideration shall be denied. OPC has not identified any point of fact or law that we overlooked or failed to consider when we rendered our Final Order in this matter.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Office of Public Counsel's Motion for Reconsideration of Order No. PSC-07-0499-FOF-EI is denied. It is further

ORDERED that this docket shall be closed after the time for filing an appeal has run.

[3] Selective catalytic reduction (SCR) is a means of removing nitrogen oxides from exhaust gases as a pollution control system.

By ORDER of the Florida Public Service Commission this 26th day of September, 2007.

ANN COLE
Commission Clerk

(SEAL)

MCB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.